

PUBLISHED BY AUTHORITY

**No. 30] NEW DELHI, MONDAY, FEBRUARY 2, 1953**

**ELECTION COMMISSION, INDIA**

## NOTIFICATIONS

New Delhi, February 2, 1953.

**S.R.O. 243.**—WHEREAS the election of Shri Tribeni Kumar, as a member of the Legislative Assembly of the State of Bihar from the Parbatta Constituency of that Assembly has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Lakhan Lal Mishra s/o Shri Manki Mishra, Vill. & P.O. Kanhaiya Chak, P. S. Parbatta, District Monghyr (Bihar);

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its order on the said Election Petition:

Now, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, BHAGALPUR.

## ELECTION PETITION No. 112 OF 1932

and

**ELECTION CASE No. 2 OF 1952**

In the matter of an election petition under section 80 of the Representation of the People Act, 1951 (Act XLIII of 1951)

and

In the matter of election to the Bihar Legislative Assembly from Parbatta Constituency in the District of Monghyr.

and

In the matter of Lakhna Lal Mishra, son of Manki Mishra, resident of village and P.O. Kanphalya Chak, P. S. Parbatta, District Monghyr,.....*Petitioner.*

**VETSUS**

1. Tribeni Kumar, son of Bindo Kumar, resident of village Dumarla Buzurg,  
P. S. Parbatta, District Monghyr.

2. Surendra Shastri, son of Premial Mandal, resident of village Valshya,  
P. S. Parbatta, District Monghyr.

3. Kedarnath Sharma, son of Jattadhari Singh, resident of village Nayagaon, P. S. Parbatta, District Monghyr.
4. Surja Narain Sharma, son of Misri Sharma, resident of village Kanhaiya, P. S. Parbatta, District Monghyr.
5. Bhubneshwar Singh Bose, son of Rajdhari Singh, resident of village Temtha, P. S. Parbatta, District Monghyr.
6. Bhagwat Shahi, son of Bhailal Mandal, resident of village Gopalpore, P. S. Gogri, District Monghyr.
7. Rajendra Narain Singh, son of Rana Digbijay Singh, resident of village Sour, P. S. Parbatta, District Monghyr.
8. Sridhar, son of Bishunath Singh, resident of Korohaka, P. S. Parbatta, District Monghyr,.....Respondents.

For Petitioner:—Sri Baldeo Sahay, Advocate, Sri Ramnarain Tewari, Advocate, Sri Hirdal Narain, pleader and Sri Satyenarain Prasad, pleader.

For Respondent No. 1:—Sri Ramchandra Pd. Sinha and Sri Niroj Chandra Ganguly, Advocates, Sri Baldeo Narayan and Sri Parmeshwar Pd. Verma, pleaders.

#### PRESENT

K. Sahai, Esqr., Barrister-at-Law, Chairman.

#### Members Election Tribunal

Umkakanta Prasad Sinha, Esqr., Retired District and Sessions Judge.  
Rajeshwar Prasad, Esqr., Advocate.

#### JUDGMENT

Sri Lakhan Lal Mishra who has filed this petition, was a candidate set up by the Congress party for election to the Legislative Assembly of the State of Bihar from the Parbatta constituency. Tribeni Kumar, respondent No. 1, was set up by the Socialist party as a candidate for election from the same constituency. Surendra Shastri, respondent No. 2, and Kedarnath Sharma, respondent No. 3, were independent candidates. The election contest actually took place between these four candidates. The other respondents were candidates who did not contest the election.

The aforesaid four contesting candidates secured the following numbers of votes:—

1. Tribeni Kumar	...	...	...	...	9,439
2. Lakhanlal Mishra	...	...	...	...	8,581
3. Surendra Shastri	...	...	...	...	5,693
4. Kedarnath Sharma	...	...	...	...	903

As Sri Tribeni Kumar secured the largest number of votes, he was declared elected.

Shortly stated, the petitioner's case is that the election was not a free election as Tribeni Kumar, the successful candidate, was guilty of major corrupt practices. Two instances of such practices were (1) that respondent No. 1 and several of his supporters engaged lathials on the 7th and 8th January at Tootha booth and on the 21st January at Mohaddipur booth in order to overawe the voters and actually threatened them with dire consequences if they voted for the petitioner and (2) that several of the supporters of respondent No. 1 carried voters on Jeeps to the booths at Mathurapur, Pasraha, Dumaria Khurd, Madhopur and Harpur Katghara on different dates. His case further is that the result of the election has been materially affected due to improper acceptance of nomination papers of Kedarnath Sharma, respondent No. 3. We need not mention other allegations made by him as they have not been pressed at the time of hearing.

Respondent No. 1 has filed a written statement and contested the case. In his written-statement, he has denied the allegations made by the petitioner. He has further alleged that he took all reasonable means for preventing the commission of any corrupt or illegal practice at the election.

Each of the other respondents has filed a separate written-statement. Bhubneshwar Singh Bose, respondent No. 5, was what has been called a dummy Socialist candidate and he has in his written-statement generally denied the allegations of the petitioner. Kedarnath Sharma, respondent No. 3, has stated in his written-statement that objections were raised to the acceptance of his nomination papers, that there were some defects in his nomination papers as alleged by the petitioner but those defects constituted were irregularities and that the petitioner's allegations as to major corrupt practices committed by respondent No. 1 are correct. The other respondents have generally supported the petitioner's allegations relating to improper acceptance of the nomination papers of respondent No. 3 in spite of objections raised at the time of scrutiny of nomination papers by the petitioner. The following issues have been framed:—

#### Issues

1. Is the election petition maintainable?
2. Is the election petition barred by limitation?
3. Has there been any subsequent interpolation in the election petition or the list of alleged corrupt or illegal practice as alleged? If so, is the election petition liable to be dismissed on this ground or on the alleged ground that there were no signatures and dates on the petition or the list on the date on which they were filed before the Election Commission?
4. Whether there was improper acceptance of the nomination paper of respondent No. 3? If so, has the result of the election been materially affected thereby?
5. Did corrupt practice in the shape of undue influence extensively prevail as alleged in the Election petition and did the same vitiate the election?
6. Did respondent No. 1 take all reasonable means for preventing the commission of any corrupt or illegal practice at the Election?
7. Was there any tampering with the ballot boxes of the petitioner and respondent No. 3 as alleged? If so, did it materially affect the result of the election?
8. For what relief, if any, is the petitioner entitled in this case?

#### Findings

*Issues Nos. 1, 2 and 3.*—This Tribunal has already disposed of these three preliminary issues by our order, dated the 24th December, 1952. Issue No. 1 has been answered in the affirmative and issues Nos. 2 and 3 have been answered in the negative.

*Issue No. 7.*—This issue has not been pressed and there is no evidence to show that the ballot boxes of the petitioner were tampered with. Hence this issue is answered in the negative.

*Issue No. 5.*—Although undue influence is the only form of corrupt practice which has been mentioned in this issue, the petitioner has adduced evidence in support of both the instances of corrupt practices which I have mentioned above. We, therefore, proceed to consider the evidence relating to both of them.

Mahavir Missir (P.W. 1) says that at about 3 P.M. on 8th January 1952 he saw Ugresh Missir, Sukhdeo Missir and Tarai Jha with 10 or 12 others near Temtha booth and that they were telling voters to vote for the Socialist candidate or else the consequence would be bad. He is an interested witness as he was the petitioner's polling agent at Temtha booth. Besides, he does not say that anyone was armed with a lathi and he admits that he did not hear any explanation of the vague words used by Ugresh Missir and others as he did not pay much attention. It appears from the diaries (Exts. C-2 and 1) that polling took place at Temtha booth on 7th January 1952 and 8th January 1952. P.W. 4 says that he saw Tarni Jha, Ugresh Missir and Sukhdeo Missir with some lathials on the second day of polling at Temtha booth and that they were telling voters that they would be beaten and their properties would be looted if they did not vote for Tribeni Kumar, respondent No. 1. He is the Head Master of a Middle English School and he admits that he was suspended for sometime on account of alleged misappropriation of the school funds. He says that he recognised some of the lathials and some of the voters who were threatened but he admits that he did not give the names of the lathials to the petitioner though he claims to have given the names of the voters to him. The petitioner has not mentioned in his petition or in his list of particulars the name of any voter who was threatened. P.W. 15 was the Presiding Officer of Temtha

booth. He says that the polling agents of Tribeni Kumar, respondent No. 1, and Suresh Chandra Missir, Socialist candidate for parliamentary election, reported to him that Congress volunteers were obstructing their voters and not that the petitioner's agent reported to him that the supporters of respondent No. 1 were threatening the petitioner's voters. He says, however, that there was a hue and cry outside the booth at about 3-45 P.M. and people were seen rushing towards the west, that he sent the Assistant Sub-Inspector of Police along with some armed constables to control the disturbance and that the trouble seemed to subside and the atmosphere became peaceful. Ext. 1 is the diary of this officer, dated 8th January 1952. It fully supports his evidence. P.W. 16 was the senior polling officer under P.W. 15 at Temtha booth. He says that there was a hulla in the neighbourhood of the booth at about 3 P.M., that he proceeded to the gate of the enclosure where identity cards used to be issued to voters, that he found two crowds facing each other, that some split bamboos had been snatched out of the fencing around an orchard and that he recognised Bhubneshwar Singh Bose, the polling agent of Sri Suresh Chandra Missir, in those crowds. He admits that Bhubneshwar Singh Bose was quite unarmed and that he merely saw Bhubneshwar saying something to the crowd behind him. It may be that Bhubneshwar Singh Bose was merely trying to pacify the crowd which was behind him. Hence the evidence of this witness does not show that Bhubneshwar Singh Bose was ready to fight. P.W. 22 says that Ugresh and Tarni were with 8 or 10 lathials near Temtha booth on the second day of polling and that they threatened him saying that there would be *mardanga* (assault) if he did not vote for Tribeni Kumar. On being cross-examined, he states that Tarni and Ugresh were within the gate of the enclosure and that the lathials were outside the enclosure at about a distance of one lagga when Tarni and Ugresh threatened him inside the enclosure. We consider it to be highly improbable that any supporter of Tribeni Kumar could have threatened any voter actually inside the polling enclosure. If that had been so, the Presiding officer and other officers of his party must have taken serious notice of the action. There is nothing in the diary (Ext. 1) to show that there was any disturbance inside the enclosure. The petitioner (P.W. 28) himself says that Tribeni Kumar and Sukhdeo Missir who were accompanied by 7 or 8 lathials were holding out threats to voters on the first day of polling at Temtha. He further says that Sukhdeo Missir, Tarni Jha and Ugresh Missir were holding out threats to voters even on the second day of polling at Temtha, that he objected and that thereupon the men of the Socialist party took out split bamboos from a fencing around an orchard and ran towards him but the police came up and no occurrence took place. His evidence relating to the first day of polling at Temtha i.e. 7th January 1952 is unsupported and cannot be accepted. His evidence relating to the second day shows clearly that Sukhdeo Missir, Tarni Jha and Ugresh Missir had no lathials with them because no necessity for taking out split bamboos from a fencing would have arisen if people armed with lathis had been with them. Thus it is clear that the evidence of P.Ws. 4 and 22 is unreliable. That being so, the evidence of only two interested witnesses, namely, P.Ws. 1 and 28 remains as to the general allegation relating to threats. Ugresh Missir (R.W. 15), Sukhdeo Missir (R.W. 18) and Tarni Jha (R.W. 19) deny that they threatened any voter. In view of their denial and in view of the fact that P.Ws. 1 and 28 are interested witnesses, we hold that R.Ws. 15, 18 and 19 were not accompanied by lathials and that they did not threaten any voter.

There was undoubtedly an apprehension of a breach of the peace at about 3 or 3-45 P.M. on 8th January 1952 as this has been deposed to by the Presiding officer (P.W. 15). There is no reliable evidence, however, to show that respondent No. 1 or the supporters of the Socialist party were responsible for it.

P.Ws. 13 and 28 are the only witnesses who speak of threats having been held out to voters at the Mohaddipur booth. P.W. 13 says that he saw Tribeni Kumar and Ramautar Singh who were with some lathials threatening voters, saying that they would assault them and loot their properties if they did not vote for the Socialist candidate. He states in his cross-examination that a constable was standing at the gate of the polling enclosure which was at about 30 ft. from the place where the voters were being threatened. The petitioner (P.W. 28) says that he saw that Tribeni Kumar, Bhubneshwar Singh Bose and Tarni Jha who were accompanied by about 10 lathials were threatening voters outside the Mohaddipur booth. He admits, however, that he did not make any written complaint in this connection before any of the Presiding officers or before the police parties attached to any of them. Respondent No. 1 (R.W. 21), Bhubneshwar Singh Bose (R.W. 20) and Tarni Jha deny that they threatened any voter. It seems to us that the evidence of P.Ws. 13 and 28 on this point is improbable and we hold that no threats were held out by respondent No. 1 or any of his supporters to any voter near Mohaddipur booth and that they were not accompanied by lathials.

We will now consider the allegations relating to the carrying of voters on Jeeps. Sri Suresh Chandra Missir, the Socialist candidate for election to the Parliament, and his brother Shivakant Missir have admittedly a Jeep. It is alleged by the petitioner that this Jeep was used for carrying voters to the booths at Harpur Katghara, Pasraha and Mathurapur. It is further alleged by the petitioner that Jogendra Kumar (R.W. 16) has a white Jeep which he keeps within the premises of a kutchery of Raj Banalli at Nayagaon which he has purchased and that this Jeep was used for carrying voters to the booths at Dumarla Khurd and Sri Krishna H.E. School, Madhopur. It may be mentioned that Madhopur is a tola of Mayagaon. Dr. Vatsyayan (R.W. 14) admittedly lives in the aforesaid kutchery. He and Jogendra Kumar (R.W. 16) say that Jogendra Kumar has not but his cousin Chandramani Kumar has purchased the Banalli Raj kutchery at Nayagaon. Dr. Vatsyayan says that he has a Jeep of reddish colour which he had lent with his driver Sardar Niranjan Singh to Tribeni Kumar for his use during the last election. Respondent Tribeni Kumar (R.W. 21) himself admits that Dr. Vatsyayan had lent his Jeep of reddish colour with the driver to him for his use for the whole of December, 1951 up to the last day of polling in January, 1952. He also says that the Socialist flag used to be kept flying on the Jeep during the whole period as he used to go about in it for canvassing and propaganda. He further says that pictures of his symbol used to remain pasted at 2 or 3 places in the Jeep. Ramchandra Missir (P.W. 27) filed a petition (Ext. 2) for ascertaining whether any Jeep was registered in the name of Jogendra Kumar. The report of the office of the Superintendent of Police is Ext. 2-1. It shows that a Jeep bearing No. BLB 1306 is registered in the name of Dr. Vatsyayan. There can thus be no doubt that Dr. Vatsyayan has a Jeep and that Jogendra Kumar (R.W. 16) has no Jeep. There seems to be no reason to disbelieve the evidence of Dr. Vatsyayan (R.W. 14) that the Jeep is of chocolate red colour and that its driver Sardar Niranjan Singh was also lent with it to Tribeni Kumar. As a candidate, who uses a vehicle for canvassing and propaganda, does generally keep a flag of his party flying on it and pictures of his symbol pasted to it, it seems to us that the evidence of Tribeni Kumar (R.W. 21) on this point should be accepted. We, therefore, accept it. The question that arises for consideration is not whether Jogendra Kumar's Jeep was used for carrying voters but whether Dr. Vatsyayan's Jeep was used for that purpose.

We now proceed to consider separately the evidence relating to the carrying of voters to each of the five polling booths mentioned above:—

(1) *Dumarla Khurd*.—P.Ws. 3, 5, 6, 26 and 28 have stated that voters were brought by supporters of the Socialist party on Jogendra Kumar's Jeep. Being the petitioner, P.W. 28 is an interested witness. P.W. 26 was the petitioner's polling agent at Dumarla Khurd but P.W. 3 used to work as such on her behalf on the second day of polling there. As P.Ws. 3 and 26 acted as polling agents for the petitioners they are also interested witnesses. It appears from the diaries (Exts. A and A-1) that polling took place in the U.P. School at Dumarla Khurd on 11th January 1952 and 12th January 1952. P.W. 5 was polling officer at the booth and he merely says that he saw the polling agent of the Congress candidate filing a petition before the Presiding officer on 12th January 1952. Deonandan Prasad (P.W. 6) was another Polling officer there. He says that he saw voters being brought near the booth in a Jeep belonging to the Socialist party on 12th January 1952. It appears from the diaries (Exts. A series) of Anand Mohan Kumar, the Presiding officer under whom P.Ws. 5 and 6 worked, that he was not satisfied with the work of P.W. 6 that he reported this to the Returning officer and the District Magistrate and that P.W. 6 was ultimately recalled on 17th January 1952. P.W. 6 also admits that the District Magistrate recalled him. We may further mention that he says that he thought that the Jeep belonged to the Socialist party because one of the passengers in it was wearing a red cap and that there was no other mark to show that it belonged to the Socialist party. It seems to us that the fact that a passenger in a Jeep is wearing a red cap cannot warrant an assumption that the Jeep belongs to the Socialist party. Besides, as we have already held, the Socialist flag used to be kept flying and the pictures of the symbol of Tribeni Kumar used to be kept pasted on it. If P.W. 6 had seen voters being brought in that Jeep, he would certainly have mentioned those facts showing that it belonged to the Socialist party. Hence we are not prepared to act upon the evidence of P.W. 6. P.W. 3 was the polling agent of Tribeni Kumar in that booth. He says that he filed a petition before the Presiding officer at 10 A.M. to the effect that Congress workers were bringing voters in a Jeep and that the polling agent of the Congress candidate also filed a petition about half an hour later that the Socialist workers were bringing voters on a Jeep though this was false. The diary (Ext. A-1) also shows that P.W. 3 as well as Chotelal Sahu (P.W. 3) filed petitions alleging that the Socialist party and the Congress

party were using Jeeps for carrying voters to the booth. The diary further shows that the Assistant Sub-inspector of Police was deputed to deal with the matter but he could not find any trace of any Jeep. R.W. 5 says that it is false to say that voters were carried on Jeeps on behalf of the Socialist party. The evidence of R.W. 10 is also to the same effect.

On a consideration of the evidence discussed above, we hold that no voter was taken to Dumarla Khurd by respondent No. 1 or any of his supporters in a Jeep belonging to Jogendra Kumar or Dr. Vatsyayan.

(2) *Harpur Katghara*.—P.Ws. 6, 9, 18, 23, 25 and 28 have given evidence on the point of voters being carried to Harpur Katghara in the Jeep belonging to Sri Suresh Chandra Missir and Sri Shrivakant Missir. As we have already mentioned, we do not feel sufficient confidence in P.W. 6 to act upon his evidence. In any case, he has merely said that the petitioner complained to him while he was at Harpur Katghara booth that voters were being brought in a Jeep by the Socialist party. P.W. 9 admits that he is a member of the Thana Congress Committee; P.W. 18 admits that he worked for the petitioner at the last election and was his polling agent and P.W. 28 is the petitioner himself. They are interested witnesses and we are not prepared to accept their evidence without reliable corroboration. P.W. 23 is a resident of village Aria and he says that he saw voters being brought to Harpur Katghara by Bhubneshwar Singh Bose and Balgobind Singh in a Jeep. Balgobind (R.W. 6) and Bhubneshwar Singh Bose (R.W. 20) have denied this allegation. P.W. 25 says that voters were being brought to Harpur Katghara by the Socialist party in a Jeep. P.Ws. 23 and 25, however, are unable to give the name of a single voter who was brought in the alleged Jeep. If they had actually seen what they claim to have seen, they would surely have been able to give the name or description of at least some of the voters. We, therefore, do not consider their evidence to be reliable. R.W. 13 is lady who resides in village Aria. She says that she used to canvass for the Socialist candidate and that she took voters from village Aria to the booth at Harpur Katghara on foot. She has stated in her cross-examination that Harpur Katghara is at about half a mile from village Aria. There is no evidence to show that the distance given by her is incorrect. It is alleged on behalf of the petitioner that voters from village Aria were also brought to Harpur Katghara on a Jeep. We are of opinion that it is not at all probable for respondent No. 1 or his supporters to have considered it necessary to bring voters for such a short distance on a Jeep.

In view of what we have said above, we hold that no voter was taken by or on behalf of respondent No. 1 to Harpur Katghara on a Jeep.

(3) *Srikrishna H.E. School, Madhopur*.—P.Ws. 8, 15, 16, 20 and 28 are the witnesses who have supported the allegation that voters were taken to Madhopur in a Jeep belonging to Jogendra Kumar (R.W. 16). P.W. 8 is the Headmaster of Srikrishna H.E. School. He admits, however, that his brother Kumar Sitaram Missir is married to the daughter of Saudagar Missir who lives in the same *angan* with and is a *gotia* of the petitioner. He is thus an interested witness. He says that he did not recognise any of the voters. P.W. 15 was the Presiding officer of the booth in Srikrishna H.E. School. He says that Rajendra Yadav complained to him on 22nd January 1952 that some of the other candidates were bringing voters on Jeeps. Rajendra Yadav has not been examined. Hence the evidence of P.W. 15 on this point is merely hearsay and it cannot be acted upon. P.W. 16 was the senior Polling officer at the booth. He says that some voters came in a Jeep which stood near the camp of the Socialist party on the second day of the poll at Srikrishna H.E. School booth i.e. 22nd January 1952. He admits that he cannot give the name of any voter who was brought in the Jeep. He denies the suggestion that his brother-in-law and the petitioner are cousins. R.W. 7 says that Ramrup Babu is the petitioner's uncle and that Arjun Prasad Singh (P.W. 16) is married to the sister of Ramrup Babu. The petitioner has himself admitted in his cross-examination that Ramrup Babu is his *gotia*. R.W. 7 appears to be a completely disinterested witness and we accept his evidence. Thus P.W. 16 is also an interested witness. P.W. 20 is a resident of Madhopur tola Muradpur. He says that he is himself a voter and that he was taken to the booth at the Srikrishna H.E. School in a Jeep driven by Jogendra Kumar (R.W. 16) and that Balgobind Singh was also in the same Jeep. We do not believe that Jogendra Kumar could drive any Jeep because there is no evidence to show that he has a driving license. As the Jeep undoubtedly belonged to Dr. Vatsyayan and as he lent the Jeep along with his Sikh driver, Jogendra Kumar could not have driven it.

Hence we are not prepared to accept the evidence of P.W. 20. The only remaining witness for the petitioner is the petitioner (P.W. 28) himself and he is necessarily an interested witness. For these reasons, we are of the opinion that there is no reliable evidence on the side of the petitioner to prove the allegation that voters were carried to the booth at Srikrishna H.E. School in a Jeep. R.Ws. 10, 16 and 20 have denied the allegation. In view of their evidence, we hold that no voter was taken in a Jeep to the booth at Srikrishna H.E. School.

(4) *Pasraha*.—P.Ws. 10, 11, 12 and 28 have given evidence in support of the allegation that voters were carried on behalf of respondent No. 1 to Pasraha booth in the Jeep belonging to Shivakant Missir. P.W. 10 is an assessor panch who says that he saw Banarsi Mandal (R.W. 12) and Bhubneshwar Singh Bose (R.W. 20) bringing voters to the Socialist camp in a Jeep near Pasraha booth and that the voters went from that camp to the polling booth. He admits that he did not report this matter to any one except the petitioner. As he is an assessor panch, he would have reported the matter to the police authorities if he had actually seen voters being brought in a Jeep. He admits that he has dispute with Ramautar Singh (R.W. 17) who is the Assistant Secretary of the Parbatta Thana Socialist party. It is likely that he has given evidence against the Socialist candidate, Tribeni Kumar because of his enmity with the Assistant Secretary of the Thana Socialist party. R.Ws. 12 and 20 have both denied the allegation that they took any voter to any polling booth in a Jeep. The evidence of P.W. 11 is the same as that of P.W. 10. He admits that he cannot give the name or addresses of the women voters who were brought in the Jeep. He further admits that defadar and chowkidars were near him at the time when he saw the Jeep. We do not think that a responsible worker of the Socialist party like Bhubneshwar Singh Bose who was himself a dummy candidate of the Socialist party for election to the State Assembly would have brought voters on a Jeep so openly. P.W. 12 is a resident of village Pintonjha. He says that Bhubneshwar Singh Bose and Banarsi Mandal came to his village in a Jeep and took female voters in that Jeep towards Pasraha. He further says that these women were ladies of the families of Banarsi Mandal and Ramkhelawan Mandal. This witness admits that he is a cousin of Banarsi Mandal and hence he must have known the names of the ladies of Banarsi's family. He admits that he cannot give the name of any of the 5 or 7 female voters who were carried away in the Jeep. P.W. 28, as we have already said, is an interested witness. In our opinion, none of those witnesses is reliable. As R.Ws. 12 and 20 have denied that they took voters to Pasraha in a Jeep, we hold that no voter was taken in a Jeep to the booth at that village.

(5) *Mathurapur*.—P.Ws. 19 and 28 are the only witnesses who speak about voters being carried to Mathurapur booth in Shivakant Missir's Jeep. P.W. 19 admits that he did not report the matter to anyone and P.W. 28 is interested. R.W. 9 has stated that he did not see any voter being taken to Mathurapur booth in a Jeep. R.W. 10 says that it is absolutely false to say that Socialist workers took voters to the booth at Mathurapur in a Jeep. We accept the evidence of these two witnesses and hold that no voter was taken to Mathurapur booth in a Jeep.

In view of our findings on all the allegations made on behalf of the petitioner relating to corrupt practices, we answer this issue in the negative.

*Issue No. 6*.—In view of our findings on Issue No. 5 this issue hardly arises for consideration. R.Ws. 3, 16 and respondent No. 1 himself i.e. R.W. 21 have said that instructions were issued to canvassers by respondent No. 1 as well as the Socialist party to the effect that no voter should be carried on any vehicle and that the canvassers should not fight with Congress workers. As we have found that no voter was carried to any booth in a Jeep and that the Socialist workers did not threaten voters or fight with any other party, there is no reason to disbelieve the evidence of these witnesses. We, therefore, accept their evidence and answer this issue in the affirmative.

*Issue No. 4*.—Kedarnath Sharma also called Kedarnath Sinha, respondent No. 3, filed two nomination papers. One of them was filled up in English and it is Ext. 4. The other nomination paper was filled up in Hindi and it is Ext. 5. Under section 33(3) or the Representation of the People Act, 1951, a declaration subscribed by the candidate that he has appointed as his election agent either himself or another person has to be filed along with his nomination paper. The form of such a declaration is printed at page 2 of each of the two nomination

papers and they are respectively Exts. 4-2 and 5-2. The word "myself" is printed in Ext. 4-2 and the word "apne" is printed in Ext. 5-2 under a line on which the name and father's name of a person to be appointed as an election agent can be written. The blank spaces are marked by dots. Kedarnath Sinha appears to have written Jugal Kishore Mahto, Mukhtar, Khagaria on the blank space in Ext. 4-2 on which the name of the elector on agent appointed by him was to be written. In the blank space for filling up the name of the agent's father, he has written Soukhlal Mahto. The printed word "myself" has been obliterated because the word "Mukhtar" has been written on it. The signature of Jugal Kishore Mahto purports to be under the column mentioned above but the purported signature as well as the name "Jugal Kishore Mahto" in the blank space referred to above have been penned through. It has not been disputed that the signature and the entry of the name of Jugal Kishore in the blank space were penned through before the nomination paper was filed. It has been argued on behalf of respondent No. 1 that as the word "myself" can just be deciphered under the word "Mukhtar," the Tribunal should hold that Kedarnath Sinha made the declaration (Ext. 4-2) to the effect that he appointed himself as the election agent. We are unable to accept this argument. There could be no difficulty in the word "myself" being written by Kedarnath Sinha in his own hand after he penned through the name of Jugal Kishore Mahto if his intention was to appoint himself as his election agent, especially when he had almost obliterated the word "myself" by writing "Mukhtar" on it. Thus the result is that the declaration (Ext. 4-2) does not show the appointment of either Jugal Kishore Mahto or Kedarnath Sinha himself though the declaration has been signed by him. As the form of declaration does not show the appointment of any election agent, it cannot be held to be a declaration as required by section 33(3).

The seconder of Kedarnath Sinha in both his nomination papers is the same, namely, Krishnakant Singh bearing serial No. 965 in the Electoral Roll. Under Section 33(2) an elector may subscribe as proposer or seconder as many nomination paper as there are vacancies to be filled but no more. It has been provided under section 36(7) (b) that "where a person has subscribed, whether as proposer or seconder, a larger number of nomination papers than there are vacancies to be filled, those of the papers so subscribed which have been first received, up to the number of vacancies to be filled, shall be deemed to be valid." There was only one vacancy which was to be filled from Parbatta constituency. The nomination paper (Ext. 4) was filed on 22nd November 1951 and the nomination paper (Ext. 5) was filed on 23rd November 1951. It has been argued on behalf of the petitioner that in view of section 33(2) and section 36(7) (b), the nomination paper (Ext. 5) cannot be considered as valid because the person who has subscribed as seconder in this nomination paper is the same as the seconder in the nomination paper (Ext. 4). On the other hand, it has been argued on behalf of respondent No. 1 that a proposer or seconder cannot subscribe to the nomination of more candidates than there are vacancies i.e. one in this case, but there can be no objection to his subscribing to more than one nomination of the same candidate. Reliance has been placed in support of this argument on the decision in the case of the Delhi Legislative Assembly from the Tibbia College Constituency (No. 32) reported in the Extraordinary Gazette of India No. 469, dated 19th November 1952. The Members of the Election Tribunal, Delhi, do seem to have expressed the view in that case that a proposer or seconder could subscribe to any number of nomination papers relating to the same candidate. With great respect, however, we differ from the view taken by that Tribunal. There is not a single word in section 33(2) or section 36(7) (b) to indicate that there could be no objection to the same proposer or seconder subscribing to different nomination papers of the same candidate. The words used in both these provisions make it quite clear that the same proposer or seconder cannot subscribe to more nomination papers than there are vacancies. Indeed, a candidate can file several nomination papers, each proposed and seconded by a different set of persons, in order to indicate his popularity among different sections of people. There could be no sense in his filing different nomination papers proposed or seconded by the same person. The decision of the Members of that Tribunal on this point is principally based upon the fact that the grounds given in sub-section (2) of section 36 for rejecting a nomination paper do not include the ground that the same proposer or seconder has subscribed to more nomination papers than the number of vacancies. We are of the opinion, however, that section 36(7) (b) makes it quite clear that nomination papers subscribed by the same proposer or seconder in excess of the number of vacancies are not valid at all. That being so, such nomination papers need not be considered at all and no question of their rejection under section 36(2) arises. We, therefore, hold that the nomination paper (Ext. 4) only can be deemed to be valid and the question that has to be considered is whether this should have been rejected or not. As the nomination paper (Ext. 5) has been seconded by the man who has subscribed as seconder in Ext. 4, this nomination paper is



not at all valid and nothing further need be considered in connection with it. Even if this nomination paper (Ext. 5) is considered, however, the position is almost the same with this exception that the printed word "apne" has not been obliterated by any over-writing and still stands as it was. We cannot import the intention on the part of Kedarnath Sinha to appoint himself as his election agent because he has allowed the name of Jugal Kishore Mahto's father Soukhilal Mahto to stand and has not cancelled it as he has cancelled the name and the purported signature of Jugal Kishore Mahto. We are, therefore, of opinion that Kedarnath Sinha has not made any valid declaration relating to the appointment of himself or any other person as his election agent either in Ext. 4-2 or in Ext. 5-2. We may add that Kedarnath Sinha has in his written-statement admitted this position but has stated that it is a mere irregularity.

The learned advocate for respondent No. 1 has drawn our attention to section 43 of the Representation of the People Act which provides that a candidate himself shall be deemed to have been appointed as his election agent in case of his having revoked the appointment of his election agent without making a new appointment. On this basis, it has been argued that Kedarnath Sinha must be deemed to have appointed himself as his election agent. In our opinion, however, the stage of section 43 had not yet arrived because the appointment of an election agent could only be revoked if it had once been made. We find that Kedarnath Sinha has not made the appointment of any election agent either under Ext. 4-2 or under Ext. 5-2 and the question of his revoking any appointment does not arise.

It has been held in the decision of the case relating to the election to the House of the People from the Baroda West Constituency reported in *Extraordinary Gazette of India* No. 361, dated the 23rd August, 1952, that the provisions of section 33 are not mandatory. The Tribunal which decided that case had to consider some provisions of section 33 other than the provision with which we are concerned. In sub-section (3) of section 33, we find the following words:— "and no candidate shall be deemed to be duly nominated unless such declaration is, or all such declarations, are delivered along with the nomination paper". In the absence of these words, we might have been inclined to hold that the provision relating to the filing of declaration in connection with the appointment of an election agent with the nomination paper was not mandatory. As we have already said while deciding the preliminary issues, the use of negative words gives a statute imperative effect. The provision that no candidate shall be deemed to be duly nominated unless he files the necessary declaration along with his nomination paper shows, therefore, that this is mandatory. When the Returning officer found that the declaration as required by law had not been filed with the nomination papers of Kedarnath Sinha, he should have held that Kedarnath Sinha had not been duly nominated. There has been some controversy between the parties as to whether objection to the acceptance of Kedarnath Sinha's nomination papers was raised by the petitioner at the time of scrutiny. P.Ws. 17, 24 and 28 have said that such objection was raised. On the other hand, R.Ws. 1 and 21 have said that no such objection was raised. Section 36(2) lays down that the Returning officer may, on an objection raised by a party or on his own motion, refuse any nomination. Hence we think that the question whether any objection was raised or not is not at all material. It was for the Returning officer himself to scrutinise the nomination paper and to see whether the provisions of section 33(3) had been complied with. Had it been necessary for us to decide whether an objection was actually raised by the petitioner, we would have had no hesitation in holding that such objection was raised on his behalf. P.W. 24 was an independent candidate for election from the same constituency. He says that he was present at the time of scrutiny and that the petitioner objected to the acceptance of nominations of Kedarnath Sinha, respondent No. 3 and Bhubneshwar Singh Bose, respondent No. 5. There seems to be no reason to reject his evidence. P.W. 17 is a pleader and he claims to have been present at the time of scrutiny. He also supports the allegation that objections were raised with regard to the nomination of Kedarnath Sinha. We find his evidence also to be reliable and we accept it. On the other hand, R.Ws. 1 and 21 are both interested witnesses.

In the circumstances mentioned above, we hold that there was no valid nomination paper of Kedarnath Sinha, respondent No. 3 and that the Returning Officer improperly accepted the nomination papers (Exts. 4 and 5).

Under section 800(1)(c) of the Act this Tribunal can declare this election to be wholly void if it is of opinion that the result of the election has been materially affected by the improper acceptance or rejection of any nomination paper. It is, therefore, necessary for us to decide whether the improper acceptance

of Kedarnath Sinha's nomination papers has materially affected the result of the election. It is well settled that the result of an election has to be deemed to be materially affected if the nomination paper or papers of a candidate are held to have been improperly rejected by the Returning Officer. There is difference of opinion as to the effect of improper acceptance of a nomination paper. In Belgaun District (N.M.R.) case reported in Jagat Narain, Vol. II, page 31, the Commissioners observed that there was a heavy onus on the petitioner to prove by affirmative evidence that all or a large number of votes secured by the candidate whose nomination paper had been improperly accepted would have gone to him. In Agra District (N.M.R.) case reported in Jagat Narain, Vol. IV, page 4, it has been observed that the improper acceptance or refusal of a nomination paper is so grave an irregularity that the strongest and most conclusive proof for rebuttal of the presumption that the election has been materially affected will be required. Both these extreme views have been dissented from in the case of Hoshiarpur West General Constituency reported in Doabia's Election Cases, Vol. II, page 288. We respectfully agree with the view taken in this last case. In Belgaun District (N.M.R.) case itself, it has been mentioned that the majority of the Commissioners were inclined to hold that "it would not be proper even to allow evidence to be adduced by the Petitioner or anybody else to show that one or other of the candidates would have got Mr. Lathie's (the candidate whose nomination paper had been improperly accepted) votes or any portion of them". In our opinion, this view is perfectly correct. Voters cannot come forward to say that they had voted for Kedarnath Sinha and that they would have voted for the petitioner or any other candidate if Kedarnath Sinha had not been in the field because, in that case, the secrecy of voting would be infringed and section 94 of the Act would stand in the way. The parties in this case have made an attempt to adduce some affirmative evidence on this point. P.W. 2 is a son of Kedarnath Sinha and he says that the votes secured by his father would have gone to the petitioner if his father had not been a candidate. The petitioner (P.W. 28) says that he would have got all those votes if Kedarnath Sinha had not been a candidate. On the other hand R. Ws. 10 and 21 have said that the votes secured by Kedarnath Sinha would have gone to the other Independent candidate and to respondent No. 1 if he had not been in the field. We think that this kind of evidence is inadmissible as they are mere opinions and guesses which do not come within the classes of opinions which are relevant under the Indian Evidence Act. That being so, no affirmative evidence could be adduced by the petitioner to show that the votes secured by Kedarnath Sinha would have gone to him. Hence it is impossible to place an onus upon him which he cannot discharge.

It is important to remember that we have only to decide whether the result of the election has been materially affected and not whether the result of the election would have been altered if Kedarnath Sinha's nomination papers had not been improperly accepted. As held in the Hoshiarpur West General Constituency case, "The question whether or not the result has been materially affected must always be a question of fact to be determined on the facts of each particular case, and no fast and hard rules for determining this can possibly be laid down." The Commissioners have, however, said in that case that they had to find whether "the result in all probability would have been different" if the nomination paper of a particular candidate had not been improperly accepted. We feel that the words "in all probability" are rather strong. If the number of votes secured by the candidate whose nomination paper has been improperly accepted is lower than the difference between the number of votes secured by the successful candidate and the candidate who has secured the next highest number of votes, it is easy to find that the result has not been materially affected. If, however, the number of votes secured by such a candidate is higher than the difference just mentioned, it is impossible to foresee what the result would have been if that candidate had not been in the field. It will neither be possible to say that the result would actually have been the same or different nor that it would have been in all probability the same or different. In the Multan Division Towns Muhammadan Constituency case reported in Sen and Poddar's Election Cases, page 597 which was a case of improper rejection of nomination paper, one of the grounds given for holding that the result of the election had been materially affected was that it was impossible to foresee what the result would have been if the nomination paper had not been improperly rejected. As we have said, the same position arises in this case also because Kedarnath Sinha secured 903 votes whereas the difference between the votes secured by Tribeni Kumar, respondent No. 1 and the petitioner is that of 858 votes only.

On a consideration of all the facts and circumstances mentioned above, we hold that the result of the election has been materially affected due to improper acceptance of nomination papers of respondent No. 3. We thus answer this issue in the affirmative.

Issue No. 8.—In view of our findings on issue No. 4, the petitioner is entitled to this relief that the election has to be declared wholly void.

It is, therefore, ordered that the election be declared to be wholly void. Parties will bear their own costs as the election is being set aside for no fault of respondent No. 1.

[No. 19/112/52-Elec. III]

BHAGALPUR;

(Sd.) K. SAHAI, Chairman.

The 27th January, 1953.

(Sd.) U. K. P. SINHA, Member.

(Sd.) RAJESHAWRI PRASAD, Member.

**S.R.O. 244.**—WHEREAS the election of Shri Shribhan Singh as a member of the Legislative Assembly of the State of Rajasthan from the Rupbas Constituency has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Girraj Singh of Deeg, District Bharatpur;

AND WHEREAS, the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 88 of the said Act, for the trial of the said Election Petition, has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

#### IN THE ELECTION TRIBUNAL, JAIPUR.

Election Petition No. 5 of 1952.

(Shri Girraj Singh Vs. Shri Shri Bhansingh and others).

#### PRESENT:

The Hon'ble Mr. Justice K. K. Sharma, *Chairman*.

Mr. A. N. Kaul, *Member*.

Mr. P. L. Shome, *Member*.

Mr. Sharma Ramesh Chandra for Shri Bhansingh respondent No. 1.

#### ORDER

Dated the 21st January, 1953

By the Tribunal (Rev. Hon'ble Sharma J.).

This is a petition by Shri Girraj Singh for a declaration that he secured a majority of 78 votes and was therefore elected from Rupbas Constituency in Bharatpur District at the last general elections to Rajasthan State Assembly. It has also been prayed that Shri Bhansingh Respondent No. 1 be held guilty of illegal and corrupt practices and be awarded punishment demanded by law.

Notices were issued to the respondents. Respondent No 1 filed a written statement. Respondent Nos. 6 and 7 Govind Saran and Tundaram were not served and the others who were served did not file any written statements. Summonses to Govind Saran and Tundaram were returned unserved. On the 8th January, the petitioner was ordered to take steps in connection with the services of these two respondents upto 10th January. The petitioner and his counsel had notice of this order but none appeared on the said date. The case was postponed to 12th January. On this date also neither the petitioner nor his counsel appeared and an order was made that the petitioner should take necessary steps by the 10th

January and it was specifically ordered that in case no steps were taken by the said date, the Tribunal will make such orders in the absence of the petitioner as it might think necessary. Shri Brij Sunder Sharma, Counsel for the petitioner was informed of this order, but he made an endorsement on the notice that he had no instructions from the petitioner. A notice by express delivery post was sent to the petitioner personally but he did not take any steps on the 19th nor did he appear before the Tribunal. The case was adjourned for today but even today the petitioner did not appear when the case was called. Nor has he taken any steps in connection with the service of Tundaram and Govind Saran. The counsel for the respondent No. 1. Shri Shri Bhansingh is present.

The Petitioner was given sufficient opportunity to take necessary steps in connection with the above two respondents but he has not cared to take any steps. He has also not appeared in the Court although an express delivery letter was sent to him personally. We, therefore, do not think it proper to drag on the case any longer.

The petition is dismissed for default of the petitioner. The respondent Shri. Shri Bhan Singh shall get his costs including Rs. 100/- as counsel's fee from the Petitioner.

(Sd.) KUMAR K. SHARMA,

(Sd.) P. L. SHOME,

(Sd.) A N. KAUL,

[No. 19/156/52-Elec.III]

P. S. SUBRAMANIAN,  
Officer on Special Duty.